

FREDERICK COUNTY PLANNING COMMISSION

May 11, 2016

TITLE: **Boyers Mill Road CIP-From Gas House Pike to North of Lake Linganore- FRO Modification Request**

FILE NUMBER: **SP-15-01 (FRO #14932)**

REQUEST: **FRO Modification Request**
The Applicant is requesting approval of a FRO modification to allow the removal of 7 specimen trees.

PROJECT INFORMATION:

ADDRESS/LOCATION: Boyers Mill Road, between Gas House Pike and Lake Linganore
TAX MAP/PARCEL: TM 69; multiple parcels
COMP. PLAN/LAND USE: N/A
ZONE: N/A
REGION: New Market
WATER/SEWER: N/A

APPLICANT/REPRESENTATIVES:

APPLICANT: Frederick County Division of Public Works
OWNER: Frederick County Government and multiple private owners
ENGINEER: Wallace Montgomery
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: Mike Wilkins

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

EXHIBIT 1 – Combined Preliminary/Final Forest Conservation Plan
EXHIBIT 2 – Updated FRO Modification Request (Re: Tree #98)
EXHIBIT 3 – FRO Modification Request from Applicant

STAFF REPORT

ISSUE

The Applicant is requesting approval for a FRO modification to allow the removal of seven specimen trees. Please note that after submittal of FCPC packet materials the Applicant withdrew the request to remove tree 98 (see sheet 10 of 13 within plan set for location), bringing the number of trees to be removed down to 7. The Applicant has submitted an update to the FRO Modification Request (see Exhibit 2 attached) with an explanation regarding tree 98.

Specimen trees are trees measuring 30" or greater in diameter. Per §1-21-40 of the FRO, nonhazardous specimen trees must be retained unless reasonable efforts have been made to protect them, the plan cannot reasonably be altered, and the FCPC finds that the requirements for granting a modification have been met.

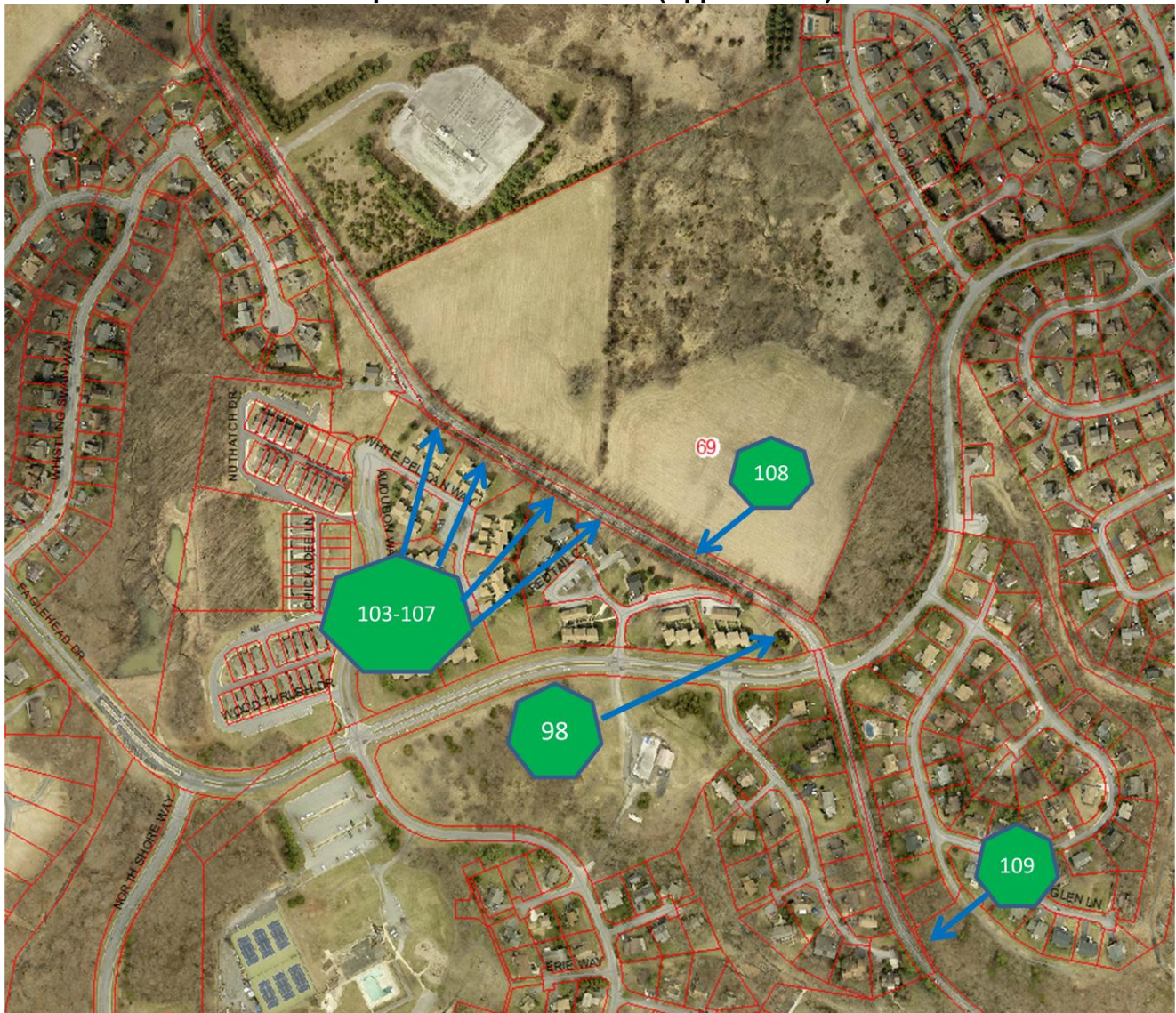
BACKGROUND

The Boyers Mill Road Capital Improvement Project (CIP) is a 1.50 +/- mile road improvement project. The road improvements include widening existing road sections and realigning other road sections. The project runs from the intersection of Gas House Pike to Lake Linganore.

PROJECT AREA



Impacted Tree Locations (Approximate)



Note: The Applicant withdrew the request to remove tree 98.

ANALYSIS

Forest Resource – Chapter 1-21:

The Applicant has submitted a Combined Preliminary/Final Forest Conservation Plan. The 1.50+/- mile project area contains 25 specimen trees (trees that are 30 inches or greater in diameter). Three specimen trees will be removed that are not subject to the FCPC modification process. Tree # 94 and tree # 96 are both dead. Tree # 97 is an invasive/exotic *Ailanthus* tree. These three trees have been approved for removal by Staff.

Per §1-21-40 of the FRO, nonhazardous specimen trees must be retained unless reasonable efforts have been made to protect them, the plan cannot reasonably be altered, and the FCPC finds that the requirements for granting a modification have been met.

Seven specimen trees are proposed to be removed. Please note after submittal of FCPC packet materials the Applicant withdrew the request to remove tree 98, bringing the number of trees to be

Boyers Mill Road CIP – FRO Modification

May 11, 2016

Page 3 of 13

removed down from the original 8 to 7.

Tree #	Common Name	Species Name	DB H	Condition
98	sawtooth oak	<i>Quercus acutissima</i>	37.4	Good
103	willow oak	<i>Quercus phellos</i>	39.5	Fair
104	red oak	<i>Quercus rubra</i>	33.2	Fair
105	willow oak	<i>Quercus phellos</i>	30.9	Fair
106	sawtooth oak	<i>Quercus acutissima</i>	34.5	Fair
107	scarlet oak	<i>Quercus coccinea</i>	35.4	Fair
108	tulip tree	<i>Liriodendron tulipifera</i>	30	Poor
109	black oak	<i>Quercus velutina</i>	34.3	Fair

The Applicant's original FRO Modification Request (see Exhibit 3 attached) discusses the trees and why their removal is proposed. Generally speaking, the Applicant argues that there is very little flexibility in the road alignment and associated infrastructure due to meeting AASHTO regulations and limiting impacts to adjoining properties.

As noted in the Applicant's Updated FRO Modification Request, Staff did not agree that tree 98 must be removed. The proposed impacts to this tree are within the existing pavement of Boyers Mill Road. Staff believes that it is unlikely the critical root zone extends under the compacted road surface. A fiber optic cable was installed at some point in the past between this tree and the existing edge of pavement. This trench would have severed any critical root zone that extended towards the road. Therefore any excavation of the roadbed will not damage critical roots. Despite this past damage the tree is still in good condition and can easily survive this construction project if adequately protected. The proposed concrete pipe (to be placed under the existing roadbed) and the removal of the asphalt will not have a significant impact on this tree. Based on these concerns the Applicant withdrew the request to remove tree 98. The Applicant in their updated request has agreed that following the FCPC decision the Combined Preliminary/Final Forest Conservation Plan (AP 14932) will be resubmitted to include retention of tree 98.

§ 1-21-21. MODIFICATIONS.

(A) *Modification requests. A person may submit a request to the Frederick County Planning Commission (FCPC) for a modification from this chapter or the requirements of Md. Code Ann., Natural Resources Article, §§ 5-1601 through 5-1612, if the person demonstrates that enforcement would result in unwarranted hardship to the person.*

(B) *Required information. An applicant for a modification shall:*

- (1) Describe the special conditions peculiar to the property that would cause the unwarranted hardship;*
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*
- (3) Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants;*
- (4) Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;*

(5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
(6) Verify that the granting of a modification will not adversely affect water quality.
(C) Modification approval. The FCPC must make a finding that the applicant has met the requirements in subsection (B) of this section and that enforcement would cause the applicant unwarranted hardship before the FCPC may approve any modification.

In order for the FcPc to grant a modification to allow the removal of specimen trees, the FcPc must find;

- that reasonable efforts have been made to protect the specimen trees and that the plan cannot reasonably be altered (in accordance with § 1-21-40 (B)(1), and;
- that the Applicant meets the six criteria outlined under §1-21-21 (B) (listed above).

Findings/Conclusions

Based upon the review and analysis as provided above and the Applicant's Justification Letter, Staff does not object to the removal of seven trees (Trees #103-109). Staff finds that the removal of Tree # 98 is unnecessary as discussed in this report and as agreed to by the Applicant.

RECOMMENDATION

Staff has no objection to conditional approval of the FRO modification request to allow the removal of seven specimen trees (Trees #103-109) and to specifically retain tree 98 which was originally proposed for removal.

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable FRO modification requirements if the modification request is granted by the Planning Commission and the following conditions are met:

1. Comply with all agency comments as the plan proceeds through to completion.
2. The FRO plan must be approved and the required FRO mitigation must be provided prior to applying for grading permits or building permits, whichever is applied for first.
3. Revise the FRO plan (AP 14932) and the Improvement Plan/Construction drawings to save and protect Tree # 98.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE WITH CONDITIONS** as listed in the staff report, the **FRO Modification Request SP-15-01 (FRO #14932)** for the proposed removal of seven specimen trees within the **Boyers Mill Road CIP** project, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

Exhibit 2: Updated FRO Modification Request (Re: Tree #98)



FREDERICK COUNTY GOVERNMENT

DIVISION OF PUBLIC WORKS

Department of Engineering & Construction Management

Jan H. Gardner
County Executive

Charles F. Nipe, Division Director

Yau-Ming (Robert) Shen, P.E., Department Head

April 20, 2016

Frederick County Planning and Permitting Division
ATTN: Mike Wilkins
30 North Market Street
Frederick, Maryland 21701

Attn: Mike Wilkins

**RE: Planning Commission Materials for May 11, 2016 Meeting
Boyers Mill Road "Northern section" CIP Project
Tree 98 - Withdraw Request to Remove**

Mr. Wilkins:

As you are aware, Frederick County's Office of Transportation Engineering (OTE) has submitted a request to permit the removal of a number of non-hazardous specimen trees to accommodate the proposed roadway widening and improvements to Boyers Mill Road (BMR) in conjunction with the construction of the BMR from Gas House Pike to North of Lake Linganore (AP# 14932) Capital Improvement Project.

Upon receiving your concerns regarding the removal of Tree #98, OTE has decided to withdraw their request to the Planning Commission for removal of this specimen tree. Following the remainder of the Planning Commission's decisions made on May 11, 2016, OTE will be resubmitting AP #14932 showing the results of the meeting and that Tree #98 will remain in place.

I can be reached at 301-600-1806 (spassman@frederickcountymd.gov) with any comments, questions, or concerns regarding this project.

Thank you for your cooperation regarding this very important public project.

Sincerely,

Samantha N. Passman, P.E.
Project Manager, Office of Transportation Engineering

cc: Jason M. Stitt, P.E., Chief, OTE
William Fiorillo, P.E., Project Manager, WMA
Project File

Frederick County: Rich History, Bright Future

Bourne Building • 355 Montevue Lane, Suite 200, Frederick, MD 21702 • 301-600-2928 • Fax 301-600-3517
www.FrederickCountyMD.gov

Boyers Mill Road CIP – FRO Modification

May 11, 2016

Page 6 of 13

Exhibit 3: FRO Modification Request from Applicant



FREDERICK COUNTY GOVERNMENT

DIVISION OF PUBLIC WORKS

Department of Engineering & Construction Management

Jan H. Gardner
County Executive

Charles F. Nipe, Division Director

Yau-Ming (Robert) Shen, P.E., Department Head

March 22, 2016

Mr. Mike Wilkins
Environmental Principal Planner
Office of Development Review
30 North Market Street
Frederick, MD 21702

RE: Response to Comments
Boyers Mill Road – North Section
CIP #: C28412
AP Project No.: 14932
WM No. 207021.08

Dear Mr. Wilkins:

Frederick County Office of Transportation Engineering (FCOoTE) is requesting a Modification from the provisions of §1-21-40 (B)(1)(e) of the Frederick County Code also known as the Forest Resource Ordinance (FRO) of Frederick County, to allow for the disturbance of trees, shrubs, and plants in priority areas, which include nonhazardous trees that:

- a) Are part of a historic site;
- b) Area associated with a historic structure;
- c) Have been designated by the state of the Department as a national, state, county, or municipal champion tree; and
- d) Are specimen trees, or are 75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current state champion tree of that species as designated by the Department of Natural Resources.

FCOoTE is seeking a modification to permit the removal of eight (8) nonhazardous specimen trees to accommodate the proposed roadway widening and/or improvements to Boyers Mill Road – North Section.

Pursuant to § 5-1611 of the Natural Resources Article of Maryland Annotated Code and § 1-21-40 of the Frederick County Code, we respectfully submit this request for a modification from Chapter 1-21 and provide the following justification explaining the special features, site circumstances or other information that demonstrates that enforcement of the Code would result in an unwarranted hardship to the Applicant.

This Variance is being submitted for review and approval in conjunction with AP No. 14932.

Background

This Modification request is in conjunction with the construction of the Boyers Mill Road from Gas House Pike to North of Lake Linganore (AP# 14932) Capital Improvement Project. The purpose of the project is to upgrade Boyers Mill Road to meet increasing traffic demands in the area with a focus on safety and maintenance concerns.

Variance Trees

This Variance requests the removal of eight (8) nonhazardous specimen trees as described in the below table and as shown on the Forest Resource Ordinance Plan. These trees are listed as the result of either direct roadway design impacts or significant removal of the tree's root system (>30%) that would commonly lead to the death of the tree.

Boyers Mill Road Improvements (CIP) – Unavoidable Specimen Tree Removals										
Tree #	Common Name	Species Name	DB H	Condition	Landowner	Mailing Address	Parcel	Tax Map	Acreage	Tax ID
98	sawtooth oak	<i>Quercus acutissima</i>	37.4	Good	Gray, Mark A & Gray, Ann C	10386 Meadowlake Cir New Market MD 21774-6904	161	69	0.85	2.8E+07
103	willow oak	<i>Quercus phellos</i>	39.5	Fair	Workman, Norman	327 King Farm Blvd Apt 309 Rockville MD 20850-6156	161	69	1	2.8E+07
104	red oak	<i>Quercus rubra</i>	33.2	Fair	Workman, Norman	327 King Farm Blvd Apt 309 Rockville MD 20850-6156	161	69	1	2.8E+07
105	willow oak	<i>Quercus phellos</i>	30.9	Fair	Bauer, Kathleen	7170 Springhouse Ln Chestnut Hill Cove MD 21226	161	69	0.51	2.8E+07
106	sawtooth oak	<i>Quercus acutissima</i>	34.5	Fair	Bauer, Kathleen	7170 Springhouse Ln Chestnut Hill Cove MD 21226	161	69		
107	scarlet oak	<i>Quercus coccinea</i>	35.4	Fair	Haney, Rose Marie	10279 White Pelican Way, NO. 101-A New Market MD 21774	161	69		
108	tulip tree	<i>Liriodendron tulipifera</i>	30	Poor	Gannon, Jack & Rosalyn	Content Farm 7101 Boyers Mill Road New Market, MD 21774-6923	153	69		
109	black oak	<i>Quercus velutina</i>	34.3	Fair	Frumkin, Scott M & Heather L	6904 Fox Chase Road New Market MD 21774	94	69		

Explanation of Proposed Disturbances to Individual Trees

Specimen Tree # 98 (37.4" DBH, sawtooth oak)

Tree # 98 is located at STA. 1057+00 RT. The tree condition has been identified as good. Impacts to the tree are due to the removal of the existing roadway section and the installation of the proposed 18" reinforced concrete pipe (RCP) between Manhole #5 and Manhole #6. In addition, the current configuration of the proposed roadway geometry meets the minimum requirements for AASHTO compliance, thus limiting the possibilities of shifting the proposed alignment further away from the tree. The current design allows for the new proposed roundabout to be within the same general footprint as the current intersection. This design minimizes the increases to impervious surface to the watershed. It is also imperative to highlight the presence of an electric and fiber optic line within the critical root zone.

Specimen Tree # 103 (39.5" DBH, willow oak)

Tree # 103 is located at STA. 1050+95 RT. The tree condition has been identified as fair. Impacts to the tree are due to roadway roadside grading (fill section). Excavation and removal of the top soil and organics is imperative to provide proper structural backfill in order to offer a solid sub-grade foundation. Impact avoidance to the tree is not feasible.

Specimen Tree # 104 (33.2" DBH, northern red oak)

Tree # 104 is located at STA. 1050+55 RT. The tree condition has been identified as fair. Impacts to the tree are due to roadway roadside grading (fill section). Excavation and removal of the top soil and organics is imperative to provide proper structural backfill in order to offer a solid sub-grade foundation. Impact avoidance to the tree is not feasible.

Specimen Tree # 105 (30.9" DBH, willow oak)

Tree # 105 is located at STA. 1048+55 RT. The tree condition has been identified as fair. Impacts to the tree are due to an 18" RCP between inlet I-19 and inlet I-6. A closed roadway section and stormwater system is being proposed in this area in order to reduce roadside grading and impacts to other trees in the vicinity. The other impact is due to the deep cuts generated by the proposed roadway vertical alignment. A change in the roadway alignment would create an unbalance in the amount of impacts across the street. The roadway designers have set up the alignment in a way that maximizes the use of the existing roadway width vs. tree impacts beyond the edge of the proposed road.

Specimen Tree # 106 (34.5" DBH, sawtooth oak)

Tree # 106 is located at STA. 1047+45 RT. The tree condition has been identified as fair. Impacts to the tree are due to a proposed inlet (I-18). The placement of this inlet was chosen based on the drainage areas requirements and off site runoff volume. Relocation of this inlet is not feasible due to roadway alignment constraints and potential roadway flooding thus causing slippery conditions to the southbound lane.

Explanation of Proposed Disturbances to Individual Trees

Specimen Tree # 98 (37.4" DBH, sawtooth oak)

Tree # 98 is located at STA. 1057+00 RT. The tree condition has been identified as good. Impacts to the tree are due to the removal of the existing roadway section and the installation of the proposed 18" reinforced concrete pipe (RCP) between Manhole #5 and Manhole #6. In addition, the current configuration of the proposed roadway geometry meets the minimum requirements for AASHTO compliance, thus limiting the possibilities of shifting the proposed alignment further away from the tree. The current design allows for the new proposed roundabout to be within the same general footprint as the current intersection. This design minimizes the increases to impervious surface to the watershed. It is also imperative to highlight the presence of an electric and fiber optic line within the critical root zone.

Specimen Tree # 103 (39.5" DBH, willow oak)

Tree # 103 is located at STA. 1050+95 RT. The tree condition has been identified as fair. Impacts to the tree are due to roadway roadside grading (fill section). Excavation and removal of the top soil and organics is imperative to provide proper structural backfill in order to offer a solid sub-grade foundation. Impact avoidance to the tree is not feasible.

Specimen Tree # 104 (33.2" DBH, northern red oak)

Tree # 104 is located at STA. 1050+55 RT. The tree condition has been identified as fair. Impacts to the tree are due to roadway roadside grading (fill section). Excavation and removal of the top soil and organics is imperative to provide proper structural backfill in order to offer a solid sub-grade foundation. Impact avoidance to the tree is not feasible.

Specimen Tree # 105 (30.9" DBH, willow oak)

Tree # 105 is located at STA. 1048+55 RT. The tree condition has been identified as fair. Impacts to the tree are due to an 18" RCP between inlet I-19 and inlet I-6. A closed roadway section and stormwater system is being proposed in this area in order to reduce roadside grading and impacts to other trees in the vicinity. The other impact is due to the deep cuts generated by the proposed roadway vertical alignment. A change in the roadway alignment would create an unbalance in the amount of impacts across the street. The roadway designers have set up the alignment in a way that maximizes the use of the existing roadway width vs. tree impacts beyond the edge of the proposed road.

Specimen Tree # 106 (34.5" DBH, sawtooth oak)

Tree # 106 is located at STA. 1047+45 RT. The tree condition has been identified as fair. Impacts to the tree are due to a proposed inlet (I-18). The placement of this inlet was chosen based on the drainage areas requirements and off site runoff volume. Relocation of this inlet is not feasible due to roadway alignment constraints and potential roadway flooding thus causing slippery conditions to the southbound lane.

As required, we provide the following justification:

1. *Describe the special conditions peculiar to the property that would cause the unwarranted hardship;*

There are no special conditions peculiar to the property that would cause unwarranted hardship. The proposed removal of the eight (8) specimen trees described above is necessary to meet the goals of the CIP project; which are to meet increasing traffic demands with a focus on safety and maintenance. There are a number of special conditions peculiar to the project, which would result in an unwarranted hardship if a modification is not granted. FCOoTE does not stand to gain monetarily from this project, only to provide citizens safe and effective transportation corridors; by keeping up with demand and area growth. Avoidance and minimization methods have been incorporated into the roadway design to the extent practical taking into account and balancing impacts to properties, SWM needs and project cost. The corridor has significant residential properties on both sides of the road and design has balanced the needs of residents, protecting as many trees as possible, without any displacements. It would be a great hardship to FCOoTE and all adjacent stakeholders if it was necessary for FCOoTE to shift the roadway and cause displacements to avoid tree impacts.

2. *Describe how enforcement of this Chapter will deprive the landowner of rights commonly enjoyed by others.*

Enforcement of this Chapter will not be depriving the landowner of rights commonly enjoyed by others. However, enforcement will be depriving FCOoTE, and the surrounding public/landowners, of the necessary roadway improvements that are required and constructed for the same amount of local increased development and travel demand. We feel that a balance between impacts to properties, SWM needs and project cost have been achieved with this roadway design.

3. *Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants.*

The granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants. The FCOoTE has provided adequate justification, above, to allow for this request. FCPC has previously granted specimen tree removal requests to other roadway projects.

4. *Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;*

As described in (1.) above, this modification request is not based on conditions or circumstances that are the result of actions by the applicant. The request is based on current natural conditions that already exist on the property. No construction or destruction of any specimen trees have occurred along the corridor as a result of this project design effort.

Response to Comments
Boyers Mill Road – North Section
CIP #: C28412 AP Project No.: 14932
Page 7

5. *Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.*

This request for the removal of eight (8) trees is based on the conditions described above and are not due to land or building use on a neighboring property.

6. *Verify that the granting of a modification will not adversely affect water quality.*

The project is subject to the Frederick County Stormwater Ordinance and Sediment and Erosion Control Ordinance. Both are in accordance with State regulations. The removal of the eight (8) specimen trees included in this request will not result in measurable degradation in water quality.

Thank you for your consideration of this Modification request. We believe that the supporting information presented in this letter provides adequate justification for the approval of the requested Modification to remove eight (8) nonhazardous specimen trees. Please feel free contact me if you have questions or require additional information.

Sincerely,

Samantha Passman

Samantha Passman, P.E.